

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
KNOXVILLE DIVISION**

LINCOLN MEMORIAL UNIVERSITY	)	
DUNCAN SCHOOL OF LAW,	)	
	)	Case No. 3:11-CV-608
Plaintiff,	)	Hon. Thomas A. Varlan
	)	Magistrate Judge C. Clifford Shirley
v.	)	
	)	
THE AMERICAN BAR ASSOCIATION,	)	
	)	
Defendant.	)	
	)	

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**DEFENDANT AMERICAN BAR ASSOCIATION’S MOTION TO DISMISS**

Pursuant to Federal Rules of Civil Procedure 12(b)(6) and 8(a), Defendant American Bar Association (“ABA”) respectfully moves to dismiss the Complaint filed by Lincoln Memorial University Duncan School of Law (“the School”).

The Complaint arises out of the School’s application for provisional approval by the Council of the Section of Legal Education and Admissions to the Bar (the “Council”). It alleges that the Council’s decision violated federal and state common law due process and violated the antitrust laws. Because the Complaint fails to plead facts that, if true, show that the School is entitled to relief, *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 150 (2009), it should be dismissed in its entirety.

The ABA files this motion in compliance with the February 8, 2012 date set by the Court for the ABA to respond to the Complaint (Doc. 31). The ABA also has concurrently filed a Motion to Stay this litigation pending the decision of the Appeals Panel on the School’s appeal from the Council’s denial of provisional approval, which appeal was publicly announced on or about January 19, 2012. In the event that the Court does not stay the litigation, the ABA respectfully requests that the Court dismiss the Complaint. The reasons for dismissal are

explained in the accompanying Memorandum of Law.

Dated: February 8, 2012

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Respectfully submitted,

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#### **CERTIFICATE OF SERVICE**

I certify that on February 8, 2012, I properly served all parties by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt and U.S. Mail.

By: s/ Howard H. Vogel (0001015)